

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYNERGY GREENTECH
CORPORATION,

Plaintiff,

v.

MAGNA FORCE, INC. ,

Defendant.

CASE NO. 3:12-cv-05543

**STIPULATED MOTION TO FILE MOTION
AND EXHIBITS TO SYNERGY
GREENTECH CORPORATIN'S MOTION
FOR SUMMARY JUDGMENT UNDER
SEAL**

Note on Motion Calendar: May 29, 2013

In accordance with CR 5(g) and 7(d)(1), and the Protective Order governing this case (Dkt. #21), Plaintiff Synergy GreenTech Corporation ("SGT") and Defendant Magna Force, Inc. ("MFI"), hereby submit this stipulated motion to seal:

- 1) Portions of SGT's Motion for Summary Judgment ("Motion");
- 2) Exhibits 1-5, 8, and 10 to Declaration of Jie Li in Support of SGT's motion ("Li Declaration");
- 3) Declaration of Wayne Erickson in Support of SGT's motion ("Erickson Declaration");
- and
- 4) Exhibits 2-12 to Declaration of Wayne Erickson in Support of SGT's motion.

Pursuant to Local Rule W.D. Wash. 5(g)(2), the Court may seal a document regarding a dispositive motion upon a showing of good cause. Both the Supreme Court and the Ninth Circuit have held that good cause exists to limit public access to judicial documents where such records

SGT's Motion to File Motion for Summary
Judgment & Exhibits Under Seal
Case No.: 3:12-cv-05543

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constitute “sources of business information that might harm a litigant’s competitive standing.”
See, e.g., Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 598 (1978); *In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 370-71 (9th Cir. 2002).

The current litigation between SGT and MFI centers on a patent assignment agreement regarding the transfer of certain MFI patents and license agreements from MFI to SGT. A third party, MagnaDrive Corporation (“MDC”), is a licensee to the MFI patents pursuant to its license agreement with MFI. MDC is not only a competitor to SGT and MFI in the magnetic coupling market, but is a party to a separate litigation pending before the Court of Appeals of the State of Washington involving the patent assignment agreement and MDC license agreement. Therefore, SGT’s and MFI’s competitive standings will be harmed if the confidential business information contained in the Motion and the supporting declaration and exhibits are not protected from public dissemination.

Local Rule 5(g)(3) Certification

In keeping with the Court’s local rules governing motions to seal, the Parties conferred telephonically on May 29, 2013 to minimize the amount of materials filed under seal. The parties have agreed that some exhibits attached to the Erickson Declaration and Li Declaration need not be sealed despite being designated “Confidential” by the producing party during discovery and have withdrawn the confidentiality as necessary.

For the documents that SGT seeks or the parties jointly seek to file under seal, the specific reasoning and support for why each of the documents should be sealed is provided below in compliance with Local Rule W.D. Wash. 5(g)(3)(B). SGT and MFI seek to file under seal the following:

Confidential Exhibits to Li Declaration

1. Li Exhibit 1 is excerpted testimony from the deposition transcript of Jo Klinski dated April 8, 2013. Certain pages of the Klinski deposition contain confidential terms of the patent agreement assignment, MDC license agreement, negotiations and performance under these agreements, and confidential business strategy information of MFI and SGT disclosed during a

1 private arbitration proceedings.

2 2. Li Exhibit 2 is excerpted testimony from the deposition transcript of Karl J. Lamb dated
3 April 26, 2013. Certain pages of the Lamb deposition contain SGT's and MFI's confidential
4 business strategies, the potential value of the MFI patents, confidential negotiations leading to the
5 patent assignment agreement and MDC license agreement, and discuss MFI's private financial
6 circumstances.

7 3. Li Exhibit 3 (MFI-Rondeau000001-05) discusses confidential business negotiations
8 between Magna Force and Synergy-affiliated companies, and includes confidential terms that
9 were incorporated into the Patent Agreement.

10 4. Li Exhibit 4 (MFI0000240) discusses the value of the License Agreement and private
11 business issues between Magna Force and MDC. The public dissemination of that information
12 would threaten to harm the competitive standing of MDC and Magna Force.

13 5. Li Exhibit 5 (MFI000243-44) discusses the value of the License Agreement and private
14 business issues between Magna Force and MDC. The public dissemination of that information
15 would threaten to harm the competitive standing of MDC and Magna Force.

16 6. Li Exhibit 8 (MFI000154) contains confidential information concerning Magna Force's
17 strategic planning and direction. The public dissemination of that information would threaten to
18 harm the competitive standing of Magna Force.

19 7. Li Exhibit 10 (MFI000189) discusses confidential business negotiations between Magna
20 Force and Synergy-affiliated companies, and includes confidential information regarding
21 royalties obtained under the License Agreement executed by MDC and Magna Force dated June
22 10, 1999. The public dissemination of that information would threaten to harm the competitive
23 standing of both Synergy and Magna Force.

24 **Confidential Exhibits to Erickson Declaration**

25 1. Erickson Exhibits 2 (SGT0000008-SGT0000009) and Exhibit 3 (SGT0000418-
26 SGT0000419) are copies of confidential inter-company electronic mail communications dated
27 July 3, 2010 and August 6, 2010 in which SGT personnel discuss specific patents, potential terms

for an agreement with MFI, and negotiations between MFI and MDC. These SGT communications contain SGT's and MFI's confidential and proprietary business information and are subject to the parties' non-disclosure agreement. The public dissemination of that information would threaten to harm the competitive standing of both SGT and MFI.

2. Erickson Exhibits 4 (SGT0000356-SGT0000357), 5 (SGT0000981-SGT0000985), and 6 (SGT0000411-SGT0000415) are copies of the confidential draft Term Sheet between SGT and MFI delineating the terms negotiated between SGT and MFI. These copies contain SGT's and MFI's confidential and proprietary business information and are subject to the parties' non-disclosure agreement. The public dissemination of that information would threaten to harm the competitive standing of both SGT and MFI.

3. Erickson Exhibits 7 (SGT0000995-SGT0001005), 8 (SGT0001006-SGT0001019), 9 (SGT0000475-SGT0000485), and 10 (SGT0000461-SGT0000474) are copies of drafts of the confidential Patent Assignment Agreement between SGT and MFI. These draft Patent Assignment Agreement contains SGT's and MFI's confidential and proprietary business information and are subject to the parties' non-disclosure agreement. The public dissemination of that information would threaten to harm the competitive standing of both SGT and MFI.

4. Erickson Exhibit 11 (SGT0000458-SGT0000460) is a copy of the confidential correspondence from MFI and MDC, dated August 10, 2010, notifying MDC about the potential issues of its license rights. This correspondence contains MFI's and MDC's confidential and proprietary business information and is subject to their confidentiality agreement. The public dissemination of that information would threaten to harm the competitive standing of both MFI and MDC.

5. Erickson Exhibit 12 (SGT0000059-SGT0000061) is a copy of the confidential electronic mail correspondence between SGT's attorney and MFI, dated October 3, 2010, regarding the completed Patent Assignment Agreement between SGT and MFI. This correspondence contains SGT's and MFI's confidential and proprietary business information as well as MDC's rights under a confidential license agreement. The information is subject to SGT's and MFI's

1 confidentiality obligations to MDC. The public dissemination of that information would threaten
2 to harm the competitive standing of SGT, MFI and MDC.

3 **Erickson Declaration**

4 Erickson declaration should be sealed in entirety because it discusses and relies on the
5 confidential business information of SGT, MFI, and MDC that Mr. Erickson learned through
6 dealings with these private companies. The information contained in his declaration is also
7 subject to Mr. Erickson's non-disclosure agreements with SGT, MFI, and MDC. The public
8 dissemination of that information would threaten to harm the competitive standing of SGT, MFI
9 and MDC.

10 **Confidential Portions of SGT's Motion for Summary Judgment**

11 Portions of the Motion sought to be redacted discuss or reflect confidential information
12 contained in Exhibits 2-12 of Erickson Declaration and Exhibits 1-5, 8 and 10 of Li Declaration,
13 as well as other confidential and proprietary business information of SGT, MFI, and MDC. The
14 public dissemination of such information would threaten to harm the competitive standing of
15 SGT, MFI, and MDC.

16 SGT is concurrently filing the unredacted version of the Motion, Erickson declaration and
17 exhibits discussed above under seal, while awaiting the Court's order on the present motion.
18 Local Rule W.D. Wash. 5(g)(5)(B).

19 WHEREFORE, SGT and MFI respectfully requests leave to file aforementioned
20 documents under seal.
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1 DATED: May 29, 2013

HOGAN LOVELLS US LLP

2 /s/ Jie Li

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22 **IT IS SO ORDERED.**

23 Dated this 30 day of May, 2013.

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26 The Honorable Benjamin H. Settle
27 UNITED STATES DISTRICT JUDGE

28 SGT's Motion to File Motion for Summary
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